



Medical Malpractice Trial, Part 3: The Trial

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

Recap of the Facts

Johnny Dalton presented to the emergency department (ED) at St. Jacob's Hospital after ingesting liquid methadone, a long-acting opioid. Responsive Emergency Medicine and Dr. Beth Ange evaluated and monitored Johnny for nearly 12 hours and discharged him home. Johnny was found dead by his family approximately 20 hours after discharge.

- **Case name:** *John and Cathy Dalton v. Dr. Beth Ange and Responsive Emergency Medicine*
- **Decedent:** Johnny Trey Dalton
- **Attorney for plaintiff:** Bernard Elliot Greyson, MD, JD
- **Attorney for defendants:** Cristy Chait, Esq.

Opening Statements

In medical malpractice trials, the plaintiffs go first. Greyson presented an emotional and sensationalized timeline of case events, showing how Johnny's family was dealing with his death. His recitation was an incredibly sanitized version of both the facts and Johnny's life. Greyson painted the decedent as a loving person on his way to becoming a professional skateboarder, untouched by drugs, violence, or alcohol, describing his death as a completely preventable occurrence caused by premature discharge from the ED. Little mention was made of the fact that Johnny actually obtained the drugs illegally and, in fact, took them to get high.

The defense's opening statement was sterile and to the point. Through pretrial motion practice, the court prevented the defense from bringing up Johnny's criminal background, his use of street drugs, his parents' calling the police on him for domestic violence, or that he had dropped out of high school. The only way to get these facts before the jury was for the plaintiff to bring them up. Although on the surface this

"[The attorney for the plaintiff] presented an emotional and sensationalized timeline of case events, showing how Johnny's family was dealing with his death."

seems unfair, it prevents undue bias either for or against the parties for facts that are generally unrelated to the case.

The Plaintiff Presents

Greyson started with testimony from both grandmothers. First, the grandmother with whom the entire family lived described how Johnny's death affected her and the family, what a kind and gentle soul he was, how his room was always clean, and how he went out of his way to help her. Oddly, she stated that although she was nearly blind, her sense of smell was heightened and that she never smelled drugs on him. The other grandmother had similar glowing memories of Johnny. Chait's cross-examination was gentle, direct, and short. There was little point in bullying the grandmothers, and bullying was not her style. Although both grandfathers were present, neither of them testified.

Next up was the decedent's mother. Greyson asked her about Johnny and the circumstances surrounding his death. According to the mother, Johnny was barely awake on the drive home from the ED and had to be carried into the house and put into bed. She did not say why, given the fact that he was so sick, that she did not check on him again until his death 22 hours later.

During the defense cross-examination, the wheels started to come off the bus. The mother contradicted herself multiple times. She also opened the door on the topic of his prior substance abuse and arrest, which allowed Chait to question every family member extensively about Johnny's past. She started what came to be the signature pattern of the plaintiff's witnesses: She recalled minute details when questioned by Greyson but said she could not recall anything when questioned by Chait.



John Shufeldt is CEO of Urgent Care Integrated Network and sits on the Editorial Board of the *Journal of Urgent Care Medicine*. He may be contacted at jshufeldt@shufeldtconsulting.com.

“The defense experts simply appeared more knowledgeable and more credible than the plaintiff’s experts. The ED expert testified about the standard of care and . . . did not stretch to reach conclusions. . . .”

Greyson called Johnny’s father, who stated that “no one told him anything” about the events leading up to Johnny’s death and that the first time he was made aware of anything was when Johnny was found dead. Johnny’s sister also testified. I felt sorry for her. She was clearly in way over her head. She told the jury that after she and her mom picked Johnny up from the ED, she pulled up at the home and dropped him off, and then went out to get food for her horses. Although seemingly trivial, this information contradicted the mother’s testimony about having to carry Johnny into the house. While waiting for the elevator outside the courtroom, I heard her ask Greyson’s assistant, “What did I do wrong?”

Johnny’s best friend and brother also testified. Even though Johnny’s brother had lived in the same room with him and even though Johnny’s best friend had skateboarded with him “5 to 6 hours per day,” neither person recalled anything about Johnny’s life, drug usage, penchant for domestic violence, or the circumstances leading up to his death. Johnny’s brother also testified that he did not know or could not recall why he took a video of Johnny during the middle of the night nor why, when he woke his mother, she would not come check on her son, who in the video looked like he was incredibly altered.

Next, Greyson called Dr. Ange. Although he did his best to try to bully her with condescension and rudeness, she remained calm, professional, and empathetic toward the parents during her 4 hours on the stand. Never once did she fall for Greyson’s baiting.

Next came the plaintiff’s experts. The ED physician testified that all methadone overdoses must be admitted, and the causation expert opined on all sorts of things, including post-mortem drug distribution and the pharmacologic effects of methadone. Their testimony stayed consistent with their previous depositions and disclosures and was in agreement with every leading question asked by Greyson.

The ED expert drew a graph for the jury that he could not support with a literature citation. He said that despite the large amount of methadone found in the patient’s stomach after his death and despite the fact that the patient was in stable condition during his 11-hour stay in the ED, his death was due to respiratory compromise caused by the *initial ingestion* occurring at least 33 hours prior.

The Defense Presents

In short, the defense experts simply appeared more knowledgeable and more credible than the plaintiff’s experts. The ED expert testified about the standard of care and, like Dr. Ange, he remained calm and professional despite bullying by Greyson during cross-examination. Unlike the plaintiff’s expert, he did not stretch to reach conclusions, and he did not believe that Dr. Ange breached the standard of care.

Our toxicology expert did a fantastic job educating everyone in the courtroom about methadone and its effects. He also showed graphs from one of his toxicology textbooks that contradicted the ED expert’s hand-drawn graph on methadone metabolism. Moreover, he was unflappable during cross-examination.

Rebuttal

Greyson tried one last time to rehabilitate the mother in the eyes of the jury, bringing her back to the stand, but it did not seem to work. Instead of hammering her on every contradiction, Chait let jury members decide for themselves the credibility of the witness. Finally, Greyson presented a computer forensic expert who was simply an underemployed attorney moonlighting as a computer specialist. His testimony was odd, confusing, and without basis.

Closing Statements

Unlike during the rest of the trial, the courtroom was packed with Johnny’s friends and family during Greyson’s closing. During the rest of the trial, Greyson had talked down to the jury, and his closing was no exception. He made a heartfelt plea for the jury to give closure to the aggrieved parents in the form of money. In contrast, Chait’s closing consisted of a skillfully prepared slide show about the events, facts, witnesses’ testimony, and supporting literature.

Jury Instructions

One very important issue remained. In Arizona, the burden of proof for medical negligence claims was raised at one point to “clear and convincing” from “more likely than not” [the italics are mine]:

A.R.S. 12-572. Burden of proof for treatment in emergency departments or rendered by on-call providers

A. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence, a health professional as defined in section 32-3201 who provides or who is consulted to provide services to a patient of a licensed hospital in compliance with the emergency medical treatment and labor act (P.L. 99-272; 100 Stat.

¹Arizona State Legislature. Arizona Revised Statutes: Title 12—Courts and Civil Proceedings; Article 1—General Provisions. © 2007 Arizona State Legislature [cited 6 April 2015]. Available from: <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/12/00572.htm&Title=12&DocType=ARS>.

“Despite the hundreds of thousands of dollars and the 2 years of angst needlessly spent on the trial, I would not have missed it. For me, it was an education in both how to be a better lawyer and how not to practice law.”

164; 42 United States Code section 1395dd) or as a result of a disaster *is not liable* for any civil or other damages as a result of any act or omission.

B. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence regarding the acts or omissions of a licensed hospital or its agents and employees in cases that are covered by subsection A of this section, the hospital is not liable for any civil or other damages as a result of any act or omission.

For reasons I still do not understand, Greyson argued that statute 12-572, which was signed into law a year before Johnny's death, did not apply to this case. The judge ruled otherwise.

The Verdict

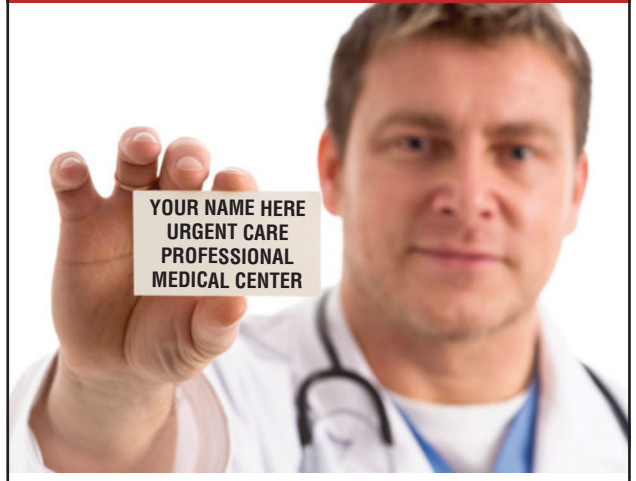
On the first vote, 6 of the 8 jurors voted for the defense. The other 2 jurors were undecided. Because only a majority was required, no more votes were taken and no further discussion ensued. When the jury returned to the courtroom, the plaintiffs and their friends were gone. Even Greyson's paralegal was absent. Greyson sat alone at the table and listened to the verdict.

Afterward, Chait talked with the jurors. They told her that they simply did not believe Johnny's mother, family members, or friends and that they thought Greyson was consistently condescending and rude, starting with his opening statement. They made it clear that they respected and believed Dr. Ange and the defense experts.

Commentary

Despite the hundreds of thousands of dollars and the 2 years of angst needlessly spent on the trial, I would not have missed it. For me, it was an education in both how to be a better lawyer and how not to practice law. As much as I would like to have the time and money back spent on defending our partner and group, I remain thankful that our legal system ensures that anyone with a grievance, whatever its validity, can argue their case before an unbiased judge and jury. However, the tale of Johnny Dalton is not over. As this was written, Greyson's team was demanding a new trial. I may have more updates in the months to come. ■

Find Your New Job TODAY!



FREE Online Job Board:

JUCM'S CareerCenter is a FREE Online Job Board and job search tool where job seekers can:

- Receive New Jobs Via Email
- Apply Online
- Save Jobs
- Upload your Resume

Start searching at:
www.UrgentCareCareerCenter.com

JUCM
THE JOURNAL OF URGENT CARE MEDICINE
CAREERCENTER

(201) 529-4020
classified@jucm.com